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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,096	10/31/2003	Philip W. Wyers	2000	2637

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EXAMINER	
ARK, DARREN W	

ART UNIT	PAPER NUMBER
3643	

DATE MAILED: 06/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/699,096	WYERS, PHILIP W.	
	Examiner	Art Unit	
	Darren W. Ark	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 June 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-7 and 9-33* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7 and 9-33* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

HC

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-7, 9-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fahringer 4,817,330 in view of Wade et al. 4,918,857 and Winnicki 4,733,495.

In regard to claims 1 and 7, Fahringer discloses providing an elongated housing (16, 18, 19); evacuating air from the housing to establish a potential vacuum source (via 12); placing the upstream end (19) adjacent a target insect; while maintaining the effective length of the housing, creating air pressure (via 12 and after 28 is actuated) within the upstream end portion of the housing that is less than ambient pressure at the upstream end whereby air is drawn into the housing interior at a sufficient flow to draw the insect into the upstream region and be trapped therein (at 19, 20), but does not disclose providing a movable closure at an upstream end portion of the housing. Wade et al. discloses a pest collection and disposal device having a housing (32) with a moveable closure (26) at an intermediate extent of the housing and a partition (37) and wherein there is a pressure adhesive (40) which contains an insecticide over at least part of the inside surface of the tube (32) between the screen (37) and flap (26) for restraining entrapped insects. It would have been obvious to a person of ordinary skill in the art to employ the moveable closure of Wade et al. in the device of Fahringer in

order to provide a physical barrier in the airstream which will prevent the escape of insects from the housing. Fahringer and Wade et al. do not disclose the moveable closure which is disposed on a upstream end portion of the housing or the step of evacuating air while retaining the closure in the closed position. Winnicki discloses the moveable closure (86 on upstream end portion 80 of Winnicki; 5h on upstream end portion 5 of Jolly) which is disposed on an upstream end portion of the housing, **the step of evacuating air from the housing at the downstream end while retaining the movable closure in the closed position (see Fig. 2), and the step of evacuating air through the sidewall (through 20 via 24, 26; sidewall not particularly claimed)**. It would have been obvious to a person of ordinary skill in the art to modify the device of Fahringer and Wade et al. by placing the moveable closure member on the upstream end portion and evacuating air from the housing while retaining the closure in the closed position in view of Winnicki in order to assuredly retain insects sucked into the housing immediately after their entry into the housing and to evacuate the air without potentially blowing captured insects out the upstream end or scaring insects away with a breeze of evacuated air from the upstream end when in close proximity to the insects to be captured.

In regard to claims 5 and 11, Fahringer discloses mechanically maintaining the compression chamber in the compressed position (via valve 30 being in closed position; no particular structural configuration is being recited).

In regard to claim 13, Fahringer discloses the effective length of the housing is maintained (12 is only squeezed).

In regard to claims 14, 25, and 27, Fahringer, Wade et al., and Winnicki disclose the closure mechanically retained (mechanical properties of closure keeps it closed; mechanism not particularly claimed) during evacuation of air (see Winnicki wherein air is evacuated through 24, 26).

In regard to claims 15 and 28, Fahringer, Wade et al., and Winnicki disclose the closure restricted from moving outwardly in an upstream direction (Wade et al. and Winnicki disclose flap like structures that are restricted from moving outwardly by virtue of their connection to their mounting components [such as ring to which 30 is connected to Wade et al. and 67 of Winnicki]; outward movement not particularly claimed).

In regard to claims 16, 17, and 24, Fahringer, Wade et al., and Winnicki disclose the air evacuated through a downstream region (see Winnicki where air is evacuated through 24, 26; air is also evacuated through 58 but only during execution of the vacuum source).

In regard to claims 18-20 and 29-31, Fahringer, Wade et al., and Winnicki disclose permitting unconstrained movement of the insect within the upstream region (at 70) and releasing the insect into ambient air after capture (when disposing of 20 of Fahringer, also see col. 5, lines 49-62 of Winnicki; step is not particularly claimed).

In regard to claims 21 and 32, see col. 3, lines 1-11 of Fahringer and compartment (48) and collar (68) of Winnicki.

In regard to claim 22, Fahringer, Wade et al., and Winnicki disclose restricting evacuation of air through the upstream end of the housing (through the use of valve 24, 26 of Winnicki) during compression of the compression chamber.

In regard to claims 23 and 33, Fahringer, Wade et al., and Winnicki disclose the compression chamber maintained in compressed position by mechanically coupling it to a triggering assembly to define an engaged state for the triggering assembly (Winnicki discloses coupling trigger 98 to compression chamber 38).

3. Claims 14, 15, 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fahringer 4,817,330 in view of Wade et al. 4,918,857 and Winnicki 4,733,495 as applied to claims 1 and 7 above, and further in view of WO 92/074461 to Bron.

Alternatively, Fahringer, Wade et al., and Winnicki do not disclose the movable closure mechanically retained in the closed position and prevented from moving outwardly in the upstream direction. Bron discloses a valve (5) which is opened by air flow counter to the action of return spring (9). It would have been obvious to a person of ordinary skill in the art to modify the method of Fahringer, Wade et al., and Winnicki such that the closure is mechanically retained in the closed position and prevented from moving in the upstream direction in view of Bron in order to assuredly prevent the closure from opening and releasing any previously caught insects.

4. Claims 7, 9-12, 24-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fahringer 4,817,330 in view of Wade et al. 4,918,857, Winnicki 4,733,495, and Schuman 3,965,608.

In regard to claim 7, Fahringer does not disclose providing a movable closure at an upstream end portion of the housing or evacuating air through the sidewall at a downstream region of the housing. Wade et al. discloses a pest collection and disposal device having a housing (32) with a moveable closure (26) at an intermediate extent of

the housing and a partition (37) and wherein there is a pressure adhesive (40) which contains an insecticide over at least part of the inside surface of the tube (32) between the screen (37) and flap (26) for restraining entrapped insects. It would have been obvious to a person of ordinary skill in the art to employ the moveable closure of Wade et al. in the device of Fahringer in order to provide a physical barrier in the airstream which will prevent the escape of insects from the housing. Fahringer and Wade et al. do not disclose the moveable closure which is disposed on a upstream end portion of the housing or the step of evacuating air through the sidewall at a downstream region of the housing. Winnicki discloses the moveable closure (86 on upstream end portion 80 of Winnicki; 5h on upstream end portion 5 of Jolly) which is disposed on an upstream end portion of the housing **and the step of evacuating air through the endwall (through 20 via 24, 26; sidewall not particularly claimed)**. It would have been obvious to a person of ordinary skill in the art to modify the device of Fahringer and Wade et al. by placing the moveable closure member on the upstream end portion and evacuating air such that the air is evacuated at an upstream end of the housing during compression of the chamber in view of Winnicki in order to assuredly retain insects sucked into the housing immediately after their entry into the housing and to evacuate the air without potentially blowing captured insects out the upstream end or scaring insects away with a breeze of evacuated air from the upstream end when in close proximity to the insects to be captured. Fahringer, Wade et al., and Winnicki do not disclose evacuating air through the sidewall of the housing. Schuman discloses evacuating air through a sidewall of a downstream region of the housing (at 35 of

housing 10). It would have been obvious to a person of ordinary skill in the art to modify the method of Fahringer, Wade et al., and Winnicki such that air is evacuated through the sidewall at a downstream region of the housing in view of Schuman in order to direct any currents of air away from the targeted insects or the user so as to not scare insects or annoy the user.

5. Claims 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fahringer 4,817,330 in view of Wade et al. 4,918,857, Winnicki 4,733,495, and and Schuman 3,965,608 as applied to claim 7 above, and further in view of WO 92/074461 to Bron.

Alternatively, Fahringer, Wade et al., Winnicki, and Schuman do not disclose the movable closure mechanically retained in the closed position and prevented from moving outwardly in the upstream direction. Bron discloses a valve (5) which is opened by air flow counter to the action of return spring (9). It would have been obvious to a person of ordinary skill in the art to modify the method of Fahringer, Wade et al., Winnicki, and Schuman such that the closure is mechanically retained in the closed position and prevented from moving in the upstream direction in view of Bron in order to assuredly prevent the closure from opening and releasing any previously caught insects.

6. Claims 1-7, 9-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fahringer 4,817,330 in view of Winnicki 4,733,495.

Fahringer does not disclose a moveable closure disposed on an upstream end portion of the housing. Winnicki and Jolly disclose the moveable closure (86 on free

end portion 80 of Winnicki; 5h on upstream end portion 5 of Jolly) which is disposed on an upstream end portion of the housing. It would have bepn obvious to a person of ordinary shill in the art to modify the device of Fahringer and Wade et al. by placing the moveable closure member on the upstream end portion in view of Winnicki or Jolly in order to assuredly retain insects sucked into the housing immediately after their entry into the housing.

7. Claims 14, 15, 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fahringer 4,817,330 in view of Winnicki 4,733,495 as applied to claims 1 and 7 above, and further in view of WO 92/074461 to Bron.

Alternatively, Fahringer and Winnicki do not disclose the movable closure mechanically retained in the closed position and prevented from moving outwardly in the upstream direction. Bron discloses a valve (5) which is opened by air flow counter to the action of return spring (9). It would have been obvious to a person of ordinary skill in the art to modify the method of Fahringer and Winnicki such that the closure is mechanically retained in the closed position and prevented from moving in the upstream direction in view of Bron in order to assuredly prevent the closure from opening and releasing any previously caught insects.

8. Claims 7, 9-12, 24-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fahringer 4,817,330 in view of Winnicki 4,733,495 and Schuman 3,965,608.

In regard to claim 7, Fahringer does not disclose a moveable closure disposed on an upstream end portion of the housing. Winnicki and Jolly disclose the moveable closure (86 on free end portion 80 of Winnicki; 5h on upstream end portion 5 of Jolly)

which is disposed on an upstream end portion of the housing. It would have been obvious to a person of ordinary shill in the art to modify the device of Fahringer and Wade et al. by placing the moveable closure member on the upstream end portion in view of Winnicki or Jolly in order to assuredly retain insects sucked into the housing immediately after their entry into the housing. Fahringer and Winnicki do not disclose evacuating air through the sidewall of the housing. Schuman discloses evacuating air through a sidewall of a downstream region of the housing (at 35 of housing 10). It would have been obvious to a person of ordinary skill in the art to modify the method of Fahringer and Winnicki such that air is evacuated through the sidewall at a downstream region of the housing in view of Schuman in order to direct any currents of air away from the targeted insects or the user so as to not scare insects or annoy the user.

9. Claims 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fahringer 4,817,330 in view of Winnicki 4,733,495 and Schuman 3,965,608 as applied to claim 7 above, and further in view of WO 92/074461 to Bron.

Alternatively, Fahringer, Winnicki, and Schuman do not disclose the movable closure mechanically retained in the closed position and prevented from moving outwardly in the upstream direction. Bron discloses a valve (5) which is opened by air flow counter to the action of return spring (9). It would have been obvious to a person of ordinary skill in the art to modify the method of Fahringer, Winnicki, and Schuman such that the closure is mechanically retained in the closed position and prevented from moving in the upstream direction in view of Bron in order to assuredly prevent the closure from opening and releasing any previously caught insects.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Roth 1,212,815 discloses air which is evacuated only through the downstream region (at 19, 21).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (571) 272-6885. The examiner can normally be reached on M-Th, 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Darren W. Ark
Primary Examiner
Art Unit 3643

DWA